Judgment Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Reference No. 01 of 2006

State

Versus

Anit Kumar & others……Convicts/Respondents

ALONGWITH

Criminal Appeal No. 23 of 2006

1. Dharmendra, S/o Chidda
2. Jitendra, S/o Jai Pal
   Both R/o Village Dayampur
   P.S. Kakkar Khaira
   District-Meerut. ….Appellants.

Versus

State ……..Respondent.

AND

Criminal Appeal No. 43 of 2006

Anit Kumar, S/o Biri Singh
R/o Sugar Mills Bamni Khera
Palval, district Faridabad
Hariyana. ……. Appellant.

Versus

State ……Respondent

Shri S.K. Agarwal, Sr. Advocate, assisted by Shri Manish Arora, learned counsel for the appellants in criminal Appeal No. 23 of 2006 and for convict/respondents No. 2 and 3 in reference No. 01 of 2006.

Shri S.P.S. Panwar, Sr. Advocate, assisted by Shri H.C. Pathak, learend counsel for appellant in criminal appeal No. 43 of 2006 and for covict/respondent No. 1 in reference No. 01 of 2006.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per Hon'ble Prafulla C. Pant, J.]

The above mentioned reference made under Section 366 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.) and the two appeals (No. 23 of 2006 and 43 of 2006), preferred under Section 374 of Cr.P.C., have arisen out of the

same judgment and order dated 13.03.2006, passed in Sessions Trial No. 265 of 2003 with S.T. No. 264 of 2003, S.T. No. 58 of 2004, S.T. No. 59 of 2004 and S.T. No. 60 of 2004, by learned Additional Sessions Judge/Ist Fast Tract Court, Roorkee, District Haridwar, as such, the same are being taken up together.

2. By the impugned judgment and order, the trial court has convicted all the three accused/appellants namely, Anit Kumar, Dharmendra and Jitendra under Section 302 read with Section 34 Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and also under Section 25/4 Arms Act, 1959, and each one of them has been sentenced to death and directed to pay fine of Rs. 500 under Section 302/34 I.P.C., and rigorous imprisonment for one year under Section 25/4 Arms Act, 1959.

3. Heard learned counsel for the parties and perused the entire lower court record.

4. Prosecution story is that on 09.08.2003, at about 12:20 hours, a report (Ext. A-1) was lodged by Surendra Kumar Upadhayaya (P.W. 1) resident of Shakti Vihar, Teliwala with police station Gangnehar, Roorkee, informing that at about 11:50 A.M. when informant was standing near his house, he heard shrieks of his neighbours Shiv Kumar and his wife Mithlesh. The informant rushed towards his neighbour’s house. Meanwhile, he heard sound of two shots being fired. When he entered in the house

of his neighbour, he saw Shiv Kumar lying dead and his wife Mithlesh moaning in an injured condition. Meanwhile, four miscreants armed with deadly weapons- pistols and knives, ran away from the house, firing shots in the air to terrorize the people. The informant Surendra Kumar Upadhayaya P.W. 1) in the First Information Report further informed that the four miscreants had ran towards near by jungle and the villagers were chasing them. On this information, check report (Ext. A-10) was prepared and the entry was made in the general diary (extract of which is Ext. A-11) and the police party from the police station, headed by P.W. 3 D.S. Panwar, Station House Officer, rushed towards the place of incident. On reaching there, they witnessed Shiv Kumar, lying dead and Mithlesh moaning in an injured condition. P.W. 3 D.S. Panwar, asked Sub-Inspector O.P. Sisodia (P.W. 19) to prepare the inquest report of dead body of Shiv Kumar and directed Sub-Inspector R.P. Singh to take the injured Mithlesh to hospital. Leaving them there, the S.H.O. along with police force went to chase the miscreants on being informed by the witnesses that miscreants had gone towards the jungle. When the police party reached near Paniyala Road, they saw two boys. The residents of the area, who were accompanying the police party told that the boys are two of the four miscreants, who committed crime. The police party apprehended to two. On interrogation, one of the apprehended, disclosed his name as Sandeep alias Sonu resident of Village Kamsad, P.S. Daurala, District Meerut (U.P.),

presently living in Sugar Mill, Palwal, Faridabad, Haryana. (Sandeep alias Sonu being juvenile is being tried separately by the Judvenile Board, Haridwar). The second person arrested disclosed his name Anit Kumar (one of the convict/appellants), S/o Biri Singh, resident of Village Baman Kheri, Palwal, Faridabad, Haryana. On the search on his person, a blood stained knife (Ext. 8) was recovered from him and a memorandum of recovery (Ext. A-2) was prepared by the police in the presence of the witnesses regarding the recovery of country made pistol and knife recovered from Sandeep and also regarding the blood stained knife recovered from possession of accused/appellant Anit Kumar. The police also prepared memorandum (Ext. A-12) relating to blood stained clothes of the two accused. The two apprehended, disclosed that their other two associates in the crime Dharmendra and Jitendra (convict/appellants) were hiding themselves in the near by fields. However, they could not be apprehended on that day. The police party came back to the police station along with the apprehended Sandeep alias Sonu and Anit Kumar and with the arms recovered from them. Meanwhile, inquest report (Ext. A-28) was prepared by Sub-Inspector O.P. Sisodia (P.W. 19) after taking the dead body of Shiv Kumar in his possession, He also prepared police form No. 13 (Ext. A-29), sketch of the dead body of Shiv Kumar

(Ext. A-30), and sample seal (Ext. A-31). On the very day, i.e. on 09.08.2003, Mithlesh also succumbed to her injuries in the hospital. Sub-Inspector Sadhna Tyagi (P.W. 18), prepared inquest report (Ext. A-24) after taking the dead body of deceased Mithlesh in her possession in the hospital. Sample seal (Ext. A-25), sketch of the dead body of Mithlesh (Ext. A-26), and police form No. 13 (Ext. A-27), were also prepared. Both the dead bodies were sent for post mortem examination. Autopsy was conducted on the dead bodies of Shiv Kumar and Mithlesh on the next day i.e. on 10.08.2003, by the same Medical Officer (P.W. 4- Dr. P.K. Bhatnagar), who prepared the autopsy reports (Ext. A-8) and Ext. A-9) in this regard.

5. During investigation, blood stained soil and simple soil were taken from the place of incident and memorandums (Ext. A-3 and Ext. A-4) in this regard were got prepared by the police. Site plans Ext. A-6 relating to the place of incident and Ext. A-7 relating to the place where Sandeep and Anit Kumar were arrested, were prepared by Investigating Officer Shri D.S. Panwar (P.W. 3). After interrogation of witnesses first charge sheet (Ext. A-32) was submitted against accused Sandeep alias Sonu and Anit Kumar (convict/appellants) for their trial relating to offence punishable under Section 302 I.P.C. Thereafter according to the prosecution, Investigating Officer was successful in apprehending accused/appellants Dharmendra and Jitendra. On 08.10.2003, at the instance of the two, recovery of the knives used by

them in the aforesaid crime is said to have been recovered from a sugarcane field in Village Teliwala, and recovery memo (Ext. A-10) was prepared by the police in this regard. Site plans Ext. A-20 and ext. A-21 were also prepared relating to the recovery and after completing the investigation charge sheet (Ext. A-33) was submitted against accused Dharmendra and Jitendra for their trial in respect of offence punishable under Section 302 I.P.C. Separate charge sheets Ext. A-17, A-22 and A-23, were filed against accused Anit Kumar, Dharmendra and Jitendra respectively, for their trial, for the offence punishable under Section 25/4 Arms Act, 1959.

6. The Magistrate on receipt of charge sheets appears to have committed the cases relating to offence punishable under Section 302 I.P.C. as well as of the cases relating to offence punishable under Section 25/4 Arms Act, 1959, to the Court of Sessions, for trial of the accused Anit Kumar, Dharmendra and Jitendra. Since the charge sheets related to the same incident of murder, learned Sessions Judge, took up the Sessions trial No. 265 of 2003. S.T. No. 264 of 2003, S.T. No. 58 of 2004, S.T. No. 59 of 2004 and S.T. No. 60 of 2004, together for trial accused/appellants. The charge of offence punishable under Section 302 read with Section 34 I.P.C. was framed against accused/appellant Anit Kumar. A separate charge was framed against said accused relating to offence punishable under Section 25/4 Arms Act. Similar charges were framed against

rest of the two accused Dharmendra and Jitendra after their case were committed to the Court of Sessions for trial. All the three accused pleaded not guilty in respect of the charges framed against them and claimed to be tried. On this, prosecution got examined P.W. 1 Surendra Upadhaya (informant), P.W. 2 Kuldeep, resident of the locality, where the incident had taken place, P.W. 3 D.S. Panwar (Arresting Officer and Investigating Officer), P.W. 4 Dr. P.K. Bhatnagar, who conducted the post mortem examination on the dead bodies of the two deceased, P.W.5 Sub-Inspector Raj Kumar Singh, who was one of the members of the police party who chased and arrested the accused Anit Kumar and Sandeep soon after the incident, P.W. 6 Mohd. Talik, P.W. 7 Naushad, P.W. 8 Assistant S.I. Dinesh Kumar (a witness of recovery of knives on pointing of Dharmendra and Jitendra), P.W. 9 Rajvir, P.W. 10 Satish Kumar, P.W. 11 Constable Santram Singh, who prepared the check report of the First Information Report, P.W. 12 Behroj Alam, P.W. 13 Javed Farukh, P.W. 14 Rijwan, P.W. 15 S.I. Daya Ram (who investigated the crime relating to the offence punishable under Section 25/4 Arms Act, which was registered separately against accused Anit Kumar), P.W. 16 Dr. C.S. Rawat, who medically examined Anit Kumar on 09.08.2003, i.e. on the day of the Incident, after his arrest and recorded the injuries found on his person. P.W. 17 Sub-Inspector Narayan Singh verma, who investigated the crime relating of offence punishable under Section 25/4 Arms Act

against Dharmendra and Jitendra, P.W. 18 Sadhana Tyagi, who prepared inquest report of the dead body of deceased Mithlesh and P.W. 19 sub-Inspector O.P. Sisodia, who prepared inquest report of the dead body of deceased Shiv Kumar. There is also report (Ext. A-33) from the finger print expert in the matter and also the Chemical Examiner's report (Ext. A-18), which shows that the knife recfovered from accused Anit Kumar, contained human blood. Oral and documentary evidence was put to the accused/appellants in reply to which they alleged the same to be false. After hearing the parties, learned trial court found all the three accused/appellants guilty of offence punishable under Section 302 read with Section 34 I.P.C. and also that of the charge of offence punishable under Section 25/4 Arms Act, 1959. After hearing on sentence, each of the convicts is sentenced to death under Section 302/34 I.P.C. and to pay fine of Rs. 500/- Each one of the convict is also sentenced to rigorous imprisonment for one year under Section 25/4 Arms Act. The trial court while awarding the sentence, referred the case to this Court for confirmation of the death sentence. Meanwhile, the convicts also filed their appeals (No. 23 of 2006 and appeal No. 43 of 2006).

7. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of the two deceased namely Shiv Kumar and Mithlesh, recorded at the time of autopsy conducted on their dead bodies. Ext. A-9 is the post mortem examination report prepared by Dr. P.K. Bhatnagar

(P.W. 4), disclosing following ante mortem injuries on the dead body of deceased Shiv Kumar:-

1. **Lacerated wound 11 x 4cm, front of neck, bone deep with fracture, oesophagus and other tissues lacerated.**
2. **Lacerated wound 12 x 4cm, left side front of chest just below clavicle.**
3. **Lacerated wound 6 x 2cm, left side of head, bone deep, 5 cm above left ear.**
4. **Lacerated wound 4 x 1cm, top of head, 12 cm above nose.**
5. **lacerated wound 4 x 1cm, left side back of neck, bone deep.**
6. **lacerated wound 15 x 4 cm above left upper arm, bone deep.**
7. **lacerated wound, left scapular region,1 x 1cm.**
8. **Lacerated wound 2 x 1cm, inter scapular region, bone deep.**
9. **Fire arm, wound of entry with inverted margins, 2 x 1.5cm, blackening and tattooing present around the wound. 10 cm above left buttock.**
10. **Fire arm, wound of exit with exerted margins 2.5 x 2.5 cm. Front of abdomen over subcostal margin.**

In the opinion of the doctor, the cause of death was shock and haemorrhage due to ante mortem injures.

8. The post mortem examination report (Ext. A-8) prepared by Dr. P.K. Bhatnagar (P.W. 4) on the same day i.e. on 10.08.2003 at 3:00 P.M. after conducting autopsy on deceased Mithlesh, following ante mortem injuries were recorded:-

1. **Stabbed wound 5cm x 5 stitches, back of left ear.**
2. **Incised wound 1 cm x 1cm left ear pinna.**
3. **Stitched wound 7cm x 6 stitches, left side of face, muscle deep.**
4. **Stitched wound 7cm x 6 stitches left side, 2cm below injury No. 3.**
5. **Stitched wound 3cm x 3 stitches left shoulder.**
6. **Stitched wound 5cm x 3 stitches, back of left upper arm.**
7. **Stitched wound 4cm x 4 stitches, 1 on the back of left fore arm.**
8. **Stitched wound 3cm x 2 stitches back of left wrist.**
9. **Stitched wound 2cm x 1cm medial side of left hand.**
10. **Amputated crushed wound 1 x 1cm, left thumb.**
11. **Abraded contusion, 1 x 1cm on left knee.**

12. **Stitched wound 3cm x 3 stitches right side chest, 10 cm below and medial to right nipple. On exploration- muscle deep incised wound.**
13. **Stitched wound 3 cm x 3 stitches, 12 cm below left nipple.**
14. **Stitched wound 2 cm x 2 stitches 1 cm below injury No. 13. On exploration- incised wound muscle deep.**
15. **Amputated crushed wound 2 x 1cm right thumb.**
16. **Stitched wound 4cm x 4 stitches, right side back of chest. On exploration- margins clear cut cavity deep.**

In the opinion of the doctor, cause of death was shock and haemorrage due to ante mortem injuies.

9. <u>Discussion of Evidence Re- Accused Anit Kumar:-</u>

Out of the prosecution witnesses examined, P.W. 1 Surendra Kumar Upadhyaya (Informant) is neighbour of the deceased, who has stated that on

09.08.2003, at about 11:50 A.M. when he was in his house, he heard sound of firing shots from the house of deceased. When he went there, he saw Shiv Kumar lying dead and Mithlesh moaning in an injured condition. This witness has further stated that four persons ran away, firing shots and they were also armed with knives. P.W. 1 Surendra Kumar Upadhaya, has further stated that two of the miscreants were caught after they were chased with the help of the police. This witness has corroborated having lodged First Information Report (Ext. A-1). But P.W. 1 Surendra Kumar Upadhayaya, is declared hostile for the reason that the witness in the court stated that he cannot say if the accused present in the court is the apprehended one. P.W. 2 Kuldeep is also resident of Shakti Vihar and has corroborated the story, as narrated by P.W. 1 Surendra Upadhayaya and this witness also could not identify the accused present in the court, stating the reason that long time has gone and he cannot identify the apprehended accused in the court. This witness was also declared hostile. But both the above witnesses have corroborated the fact that incident took place on 09.08.2003 at 11:50 A.M. and after chase with the help of police, two of four miscreants were arrested. P.W. 1 Surendra Kumar Upadhyaya, has clarified that the two chased and apprehended, disclosed their names as Sonu and Anit Kumar.

10. P.W. 3 Sub-Inspector D.S. Panwar, is the arresting officer, who also investigated the crime. According to this witness, on receipt of information at

police station, he along with police force rushed towards the place of incident, where he left Sub-Inspector O.P. Sisodia to prepare inquest report of the deceased Shiv Kumar and asked another Sub-Inspector R.P. Singh to take injured Mithlesh to the hospital. This witness has further stated that on getting information, he along with rest of the police force and members of the public chased miscreants. P.W. 3 D.S. Panwar, has stated that the two miscreants were apprehended who disclosed their names Sonu and Anit Kumar. This witness further states that from Anit Kumar, blood stained knife was recovered. He has further stated that arresting memorandum (Ext. A-2) was prepared regarding arrest and the recovery.

11. The evidence of aforesaid three witnesses, as against convict/appellant Anit Kumar further gets corroboration from the fact that after Anit Kumar was apprehended, he was got medically examined on the very day i.e. 09.08.2003. His injury report (Ext. A-19) read with the statement of P.W. 16 Dr. C.S. Rawat, shows that at about 5:45 P.M. on 09.08.2003, following injuries were found on the person of Anit Kumar:-

1. **Incised wound 2cm x .6cm x muscle deep on the back of left fore arm, middle part.**
2. **Contusion 5cm x 2cm on back of left fore arm, middle part, red in colour.**

3. **Contusion swelling 8cm x 6cm on back of left hand, red in colour.**
4. **Contusion 7cm x 5cm on back of right hand, red in colour.**
5. **Contusion 7cm x 2cm on left side back middle part. Red in colour.**
6. **Contusion 4cm x 1cm on outer aspect of left upper arm, upper part. Red in colour.**
7. **Contusion 7cm x 3cm on back of left side back upper part. Red in colour.**
8. **Contusion 7cm x 3cm on left side back upper part. Red in colour.**
9. **Multiple contusions on all over the back of buttocks, size varying from 9cm x 3cm upto 4cmx 1 cm. Red in colour.**
10. **Contusion 6cm x 2cm back of right knee. Red in colour.**
11. **Abrased contusion 10cm x 8cm inner aspect of left ankle joint.**

12. Apart from the above discussed oral and medical evidence, there is yet another evidence corroborating the prosecution story as against the accused Anit Kumar i.e. Chemical Examiner's Report

(Ext. A-18). This report dated 18.11.2003 of the Chemical Examiner, discloses that the item No. 6 (blood stained knife, recovered from Anit Kumar), contained human blood. Therefore, even though prosecution witnesses, P.W. 6 Mohd. Talik, P.W. 7 Naushad, P.W. 9 Rajvir, P.W. 10 Satish, have not supported the prosecution story (and were declared hostile) but the evidence discussed above, establishes the charge of offence punishable under Section 304/34 I.P.C. as well as that of one punishable under Section 25/4 Arms Act, against accused/appellant- Anit Kumar. P.W. 12 Behroj Alam, P.W. 13 Javed Farukh, P.W. 14 Rijwan, were also declared hostile. But these witnesses have also supported the prosecution to the extent that on the day of the incident, the police chased the miscreants on 09.08.2003, and two of the miscreants were apprehended. However, they could not identify whether those standing trial included the one apprehended by the police. P.W. 5 Sub-Inspector Raj Kumar Singh, who was one of the members of the police party, who apprehended accused Anit Kumar and his associate Sandeep alias Sonu, has fully narrated the prosecution and corroborated the statement of P.W. 3 D.S. Panwar, Though P.W. 5 S.I. Raj Kumar Singh is police witness but in view of the statement of P.W. 1 Surendra Kumar, P.W. 2 Kuldeep and medical report, as mentioned in Ext. A-19 and Chemical Examiner's report (Ext. A-18), truthfulness of this witness cannot be doubted.

13. P.W. 18 Sadhana Tyagi stated that she prepared inquest report (Ext. A-24) after Mithlesh died in an injured condition in the hospital on 09.08.2003. The inquest report shows that it was prepared at 14:20 hours. Similarly, P.W. 19 Sub-Inspector O.P. Sisodia, has stated that he prepared inquest report (Ext. A-28) of the dead body of deceased Shiv Kumar at the place of incident and other necessary papers (Ext. A-29, A-30 and A-31), relating to the dead bodies of the deceased.

14. Having heard learned counsel for the parties and after going through the entire evidence on record, we are satisfied and agree with the trial court that as against accused Anit Kumar, it is proved that he, with common intention with his three associates, committed murder of Shiv Kumar and Mithlesh. We are also in agreement with the trial court that recovery of blood stained knife is proved from the possession of the accused Anit Kumar and as such both the charges of offences punishable under Section 304/34 I.P.C. and that of one punishable under Section 25/4 of Arms, Act, are proved against accused Anit Kumar.

15. Shri S.P.S. Panwar, learned counsel for the convict/appellant Anit Kumar, argued that there is no eye-witness of actual commission of crime and the chain of circumstances brought on record is not sufficient to convict the accused/appellant Anit Kumar. We do not find substance in the argument for the reason that commission of murder has taken place in a broad day light and after the shrieks were heard

by the neighbours, the miscreants were chased and accused Anit Kumar is one of the persons apprehended after the chase. Not only this, as discussed earlier, blood stained knife used in the crime is also recovered from him.

16. On behalf of the accused/appellant Anit Kumar it is also submitted that unless the knife recovered is connected with the commission of crime, he cannot be convicted on charge of offence punishable under Section 302 I.P.C. We are of the view that since it is proved that blood stained knife is recovered, after chase by the police and the public, soon after the commission of murder, there is little doubt that the knife was not used in the crime. There is Chemical Examiner's Report, as discussed above, showing that the blood found on the knife recovered from Anit Kumar contained human blood.

17. It is also contended on behalf of the appellant Anit Kumar that since public witnesses of fact have not identified accused Anit Kumar in the court, as such the trial court has erred in law by holding him guilty of charge of offence punishable under section 302/34 I.P.C. and that of one punishable under Section 25/4 Arms Act. In our opinion, it is sufficient to mention here that the witnesses, who had turned hostile cannot be said to be relied by the prosecution. Moreover, the evidence of the witnesses was recorded after a long gap of time as such, it was natural on their

part that they could not identify the person in court whom they saw running from the place of incident.

18. Lastly, it is submitted on behalf of the appellant Anit Kumar that it could not have been practically possible for the police to prepare the check report, memo of taking blood stained soil and simple soil, chase of the accused, arresting the accused and preparing all necessary documents by 12:40 P.M. when the incident had taken place at 11:50 A.M. We do not see much force in the submission for the reason that from evidence on record, it is corroborated that murder has taken place at 11:50 A.M. and after the arrest of the accused Anit Kumar, soon after the incident his medical examination was also got done on the very day at 5:45 P.M., as such even if there is minor error in recording the time of preparing the recovery memos, that is not sufficient to create reasonable doubt in the truthfulness of the prosecution story.

19. **Discussion of Evidence Re Dharmendra and Jitendra:-**

Unlike the case of accused Anit Kumar. Who was arrested soon after the incident after being chased and caught with a blood stained knife, used in the crime same cannot be said for accused/appellants Dharmendra and Jitendra. These two accused/appellants were not apprehended after being chased like Anit Kumar, as such not holding of test identification parade in respect of these two

accused/appellants after their arrest is fatal for the prosecution, as these two are said to have been arrested after more than 1 ½ month of the incident.

The only incriminating evidence against them is said to be recovery of knives from them and that too the articles were not blood stained. Nor the evidence adduced by the police witnesses of this fact gets corroboration from the public witnesses. Disclosure of their names to the police by accused Anit Kumar is of little value to establish the charge against them. As such, we are of the view that the prosecution has failed to prove beyond reasonable doubt that these two accused had committed murder or had common intention with other co-accused in the case. We are also of the opinion that even the charge of offence punishable under Section 25/4 Arms Act is not proved beyond reasonable doubt, as against these two as none of public witnesses have stated that knives were recovered from them. Therefore, we hold that the trial court erred in law in convicting the accused/appellants Dharmendra and Jitendra in respect of charge of offence punishable under Section 302 read with 34 I.P.C. and that of one punishable under Section 25/4 Arms Act. Both these accused, namely Dharmendra and Jitendra are entitled to the benefit of reasonable doubt and deserve to be acquitted of the charge framed against them.

20. **On the point of sentence:-**

Section 302 of I.P.C. provides only two kinds of punishments:-

1) Death or
2) Imprisonment for life
with fine.

It is settled principle of law that death sentence is to be awarded to the convict only when the case is rarest of rare one. To bring the accused in the category of rarest of rare one, what is mainly required to be seen is the gravity, magnitude of crime and its brutality. In the present case the crime is committed with common intention by the four persons of which Anit Kumar was one of them, who was armed with knife only. The persons participating in the crime have used fire arm also. In the circumstances, we are of the view that the punishment of imprisonment for life of the convict Anit Kumar would meet the ends of justice. We are of the view that in the case at hand, it is not necessary to award the extreme punishment of death. Therefore, the punishment of sentence of death awarded to Anit Kumar cannot be confirmed.

21. **Conclusion:-** For the reason, as discussed above, criminal appeal No. 23 of 2006, filed by Dharmendra and Jitendra, is allowed. The conviction and sentence awarded by the trial court against appellants Dharmendra and Jitendra is set aside. Both of them are hereby acquitted of the charge of offence punishable under Section 302/34 I.P.C. and also of the charge of offence punishable under Section 25/4 Arms Act, They are in jail. They shall be released if not wanted in connection with any other case.

22. Criminal appeal No. 43 of 2006 is partly allowed. Conviction of appellant Anit Kumar, recorded by the trial court is upheld. However, sentence of death awarded by the trial court against the convict is reduced to imprisonment for life. The impugned judgment and order dated 13.03.2006, passed by the trial court against Anit Kumar, is set aside on the point of sentence under Section 302/34 I.P.C. only. The appellant Anit Kumar is sentenced to imprisonment for life under Section 302 read with 34 I.P.C. However, sentence awarded to him under Section 25/4 Arms Act, is maintained.

23. The reference made by the trial court stands answered.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. March 12th ,2007.

Sweta